

Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Microsoft Corporation,

Plaintiff,

v.

Motorola, Inc., Motorola Mobility LLC, and
General Instrument Corporation,

Defendants.

No. C10-1823-JLR

NON-PARTIES NOKIA CORPORATION
AND NOKIA INC.'S MOTION FOR A
LIMITED SEALING ORDER

NOTE ON MOTION CALENDAR:
November 9, 2012

NON-PARTIES NOKIA CORPORATION AND NOKIA
INC.'S MOTION FOR A LIMITED SEALING ORDER

NON-PARTIES NOKIA CORPORATION AND NOKIA INC.'S

MOTION FOR A LIMITED SEALING ORDER

Nokia Corporation and Nokia Inc. (collectively "Nokia") hereby submit this motion requesting an order sealing references in documentary or testimony form to Nokia's license agreements, including specifically, but not limited to, the financial terms and royalty rates of these agreements, the duration of the license grants contained therein, the scope of licenses granted and patents included in such grants, and the specific technological standards covered by each license agreement. Compelling reasons exist for the sealing of this highly confidential information, which is Nokia's trade secret information, and which would give Nokia's competitors and customers a competitive advantage were it made public. This motion is supported by the declaration of Paul Melin, filed contemporaneously herewith.

Counsel for Motorola recently informed Nokia that the upcoming trial in the above-referenced action will likely involve the submission of evidence and testimony regarding the licensing relationships between at least Motorola Inc. and Motorola Mobility Holdings, Inc. and Nokia, including licensing agreements between Motorola Inc. and Nokia and their affiliated entities executed in June 2000 and in August 2010, and a licensing agreement between Motorola Mobility Holdings, Inc. and Nokia and their affiliated entities executed in March 2012. While the mere existence of these licenses is not confidential, the detailed terms contained in these licenses are highly confidential and extremely sensitive competitive business information to Nokia. Further, each of the licenses in question contains a confidentiality provision restricting each party's ability to disclose the terms of each license and thus protecting its confidential nature. To Nokia's knowledge, the confidential details of each license have been treated by all involved parties as highly sensitive competitive business information and as trade secrets, and the detailed terms have never been made public.

As a non-party to this action, Nokia does not have access to the exhibits sought to be introduced at the trial. As such, Nokia seeks an order requiring the parties to file all exhibits

1 containing Nokia's confidential business information, including license agreements to which
 2 Nokia is a party, royalty reports submitted pursuant to any such agreements, and any related
 3 documents, such as negotiation communications, concerning the licensing terms, including
 4 financial or royalty terms of Nokia's agreements, under seal.¹ In order to give full effect to the
 5 sealing of this confidential information, Nokia also requests that the courtroom be closed, or some
 6 alternative steps be taken to protect Nokia's confidential information from public disclosure, when
 7 testimony concerning Nokia's confidential business information is offered, when exhibits
 8 containing this information are discussed, or when arguments concerning this information are
 9 heard.

10 **There are Compelling Reasons to Grant the Narrow Relief Sought**

11 Under the law of the Ninth Circuit, a party seeking to seal a judicial record to be presented
 12 at trial must articulate "compelling reasons" in favor of sealing the record. *See Kamakana v. City*
 13 *and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Compelling reasons to seal a record
 14 exist where their disclosure could publicize a party's trade secret information. *See id.* at 1179
 15 (citing *Nixon v. Warner Commc'ns., Inc.*, 435 U.S. 589, 598 (1978)). For the purposes of sealing
 16 confidential information, the Ninth Circuit has adopted the Restatement definition of "trade
 17 secret" information as "any formula, pattern, device or compilation of information which is used
 18 in one's business, and which gives him an opportunity to obtain an advantage over competitors
 19 who do not know or use it." *In re Electronic Arts*, 298 Fed. App'x 568, 569-70 (9th Cir. 2008)
 20 (quoting *Restatement of Torts* § 757, cmt. b). The Ninth Circuit has also held that compelling
 21 reasons to seal a judicial record may exist where the document must be sealed to prevent it from
 22 being used as a source of information that could harm a party's competitive standing. *See id.* at
 23 569 (citing *Nixon*, 435 U.S. at 598).

24 _____
 25 ¹ If the court were to rule that these Nokia confidential documents, including license
 26 agreements, should not for some reason be filed under seal in their entirety, then Nokia requests at
 27 a minimum that the parties be required to redact, with Nokia's input, the most sensitive
 28 information from any exhibits to be used at the trial, including, but not limited to, the financial
 terms and royalty rates of Nokia's license agreements, the duration of the license grants in these
 agreements, the scope of licenses granted and patents included in such grants, and the specific
 technological standards covered by each agreement.

1 The licensing information that Nokia seeks to have sealed is exceptionally sensitive to
 2 Nokia's business. Courts applying the Ninth Circuit's "compelling reasons" standard have
 3 previously determined that compelling reasons exist to seal licensing agreements and related
 4 documentation in their entirety. *See Powertech Tech. Inc. v. Tessera, Inc.*, No. C 11-6121, 2012
 5 U.S. Dist. LEXIS 75831 (N.D. Cal. May 31, 2012) (granting a party's motion to seal a licensing
 6 agreement containing confidential information including financial terms paid pursuant to the
 7 agreement, as well as motions to seal other communications discussing royalty calculations and
 8 the parties' business relationship). In the alternative, Nokia seeks an order requiring the redaction,
 9 with Nokia's input, of at least the most critically sensitive information contained in the license
 10 agreements at issue, including, for example: the financial terms of the licenses, the length of each
 11 license which indicates each license's value over time, the specific standards and patents covered
 12 by each license, and any supplementary documentation containing such information such as
 13 royalty reports describing payments made pursuant to each license. Such terms are precisely the
 14 type of information that courts have found to meet the "compelling" reasons standard. Very
 15 recently, the Northern District of California, applying the same standard concerning motions to
 16 seal documents containing confidential information at issue in this case, granted Nokia's motion to
 17 seal the financial terms contained in a license agreement between Nokia and one of the litigants.
 18 *See Apple, Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-CV-1846-LHK, Order Granting-in-Part and
 19 Denying-in-Part Motions to Seal at *23 (N.D. Cal. Oct. 9, 2012). There, the court held that
 20 "'pricing terms, royalty rates, and guaranteed minimum payment terms' plainly fall within the
 21 definition of 'trade secrets' for the purposes of sealing motions." *Id.* at *21 (citing *Electronic*
 22 *Arts*, 298 Fed. Appx. at 569). The court expressly held that to publicize pricing terms, royalty
 23 rates, and payments made pursuant to confidential licensing agreements "would place these third-
 24 parties in a weakened bargaining position in future negotiations, thereby giving their customers
 25 and competitors a significant advantage. This is true of all licensing agreements sought to be
 26 sealed by the parties, including those agreements that have already expired." *Id.*²

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 28 ² Notably, the parties did not seek to introduce the entirety of the relevant licenses into
 evidence in the *Apple v. Samsung* action. Instead, they attempted to submit demonstrative

1 Nokia owns one of the largest and most important patent portfolios in the
 2 telecommunications world (Melin Decl., attached hereto as Ex. 1, at ¶ 8). As of December 2011,
 3 Nokia had research and development presence in 16 countries with nearly 35,000 people to
 4 support these activities (*id.*). With tens of billions of dollars spent over the years on research and
 5 development, Nokia maintains over 10,000 patent families in its portfolio, including hundreds of
 6 families of standards-essential patents (*id.*).

7 Nokia is almost always in negotiations with several companies at a time regarding licenses
 8 to its standard-essential patents (*id.* at ¶ 9). Nokia's ability to negotiate licenses on competitive
 9 terms would be severely hampered were the confidential terms of its license agreements, including
 10 the financial terms negotiated with competitors and the scope of the licenses covering patents that
 11 are not standards-essential, to become public (*id.*). Allowing this information to become public
 12 puts Nokia in an uneven bargaining relationship by creating information disparities between the
 13 parties to future negotiations. It also puts Nokia at a disadvantage with regard to Nokia's
 14 competitor licensors, whose information remains concealed while Nokia's is revealed. If Nokia's
 15 customers and competitors were to obtain access to the financial and related terms of these
 16 agreements, they would have access to valuable information concerning Nokia's internal
 17 valuations of its patent portfolio and licensing strategies. Similarly, if the scope of the licenses
 18 were publicized, competitors and customers would have information regarding Nokia's
 19 assessment of its licensing needs and of its willingness to license certain non-essential patents,
 20 which would give them a distinct advantage in negotiations.

21 Given the extreme importance and sensitivity of this information, Nokia would be severely
 22 harmed should the information contained in any trial exhibits become public and available to
 23 Nokia's customers and competitors (*id.* at ¶ 10).

24 Conclusion

25 For the foregoing reasons, Nokia respectfully requests that this Court issue an order

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 27 summaries of the licenses including the referenced financial terms. *See Apple, Inc. v. Samsung*
 28 *Elects. Co., Ltd.*, No. 11-CV-1846-LHK, Order Granting-in-Part and Denying-in-Part Motions to
 Seal at *23 (N.D. Cal. Oct. 9, 2012).

1 requiring the parties to file any exhibits containing Nokia's confidential business information,
 2 including without limitation Nokia's licensing agreements with the parties to this action or with
 3 any third parties, any royalty reports prepared in connection therewith, and any related
 4 documentation such as license negotiation communications, under seal. In the alternative, if the
 5 court is unwilling to allow the entirety of the confidential documents to be filed under seal, Nokia
 6 respectfully requests that the Court issue an order requiring the parties, with Nokia's input, to
 7 redact Nokia's confidential business information concerning at least the financial terms and
 8 royalty rates of Nokia's licensing agreements with the parties to this action or any third parties, the
 9 duration of the license grants in any such agreements, the scope of the license coverage and
 10 patents included in any such agreements, and the specific technological standards covered by each
 11 license agreement, from all documentary exhibits to be used at the upcoming trial in this action.
 12 Nokia further requests that this Court issue an order sealing the courtroom when any such Nokia
 13 confidential business information is discussed or taking other appropriate steps to safeguard
 14 Nokia's confidential information and ensure it does not become public.

15 DATED this 9th day of November, 2012.

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 17 /s/ Lance A. Termes

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 26 and Nokia Inc.
 27
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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2012, I electronically filed the foregoing with the Clerk of the Court using the e-filing system which will send notification of such filing to all counsel on record in the matter.

s/ Lance A. Termes

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